



**Policy Title**            PRELIMINARY BREATH TESTING OF DRIVERS  
   INVOLVED IN COLLISIONS

**CCMT Sponsor**        ACC SPECIALIST OPERATIONS

**Department/Area**    ROADS POLICING

**Section/Sector**        SPECIALIST UNIT

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### **1.0 Rationale**

The UK has a significant problem with Drink and Drug Driving and evidence shows that the current generation of younger drivers have a different attitude to the risks than the previous generation. About 16% of the three and a half thousand deaths on the road each year involve drivers who were over the legal alcohol limit. The number of drink-drive crashes, and the number of people killed or injured by drink-drivers, have both increased by more than a third over the past decade. In addition nearly one in five of drivers who die in crashes have traces of illegal drugs. Sadly Britain carries out fewer tests than more other EU countries. A recent survey showed that less than 1 in 10 drivers in Britain had been tested in the first three years. The EU average was nearly three in ten with some countries testing over 6 out of ten drivers in the three year period. When last recorded Thames Valley tested some 1,300 drivers per 100,000 population, a long way short of the leading force Derbyshire who tested 5,300 drivers per 100,000 population.

Work is already underway to assess the testing rates at collisions in Thames Valley. It is clear that we could do more to reduce the level of death and injury on our roads. This policy acknowledges the dangers created to others by those who drive whilst impaired and fully exploits the opportunities to administer preliminary breath tests, and other tests, to detect offenders and to send out a strong deterrent message to all drivers. Adherence to this policy would be a significant step forward in making our roads safer places.

### **2.0 Intention**

This policy adopts the established Association of Chief Police Officers (Roads Policing) policy in respect of breath testing after collisions as a Thames Valley Police policy and extends it to preliminary testing generally following changes in legislation.

### **3.0 General Principles**

**The basis of the policy is that all drivers involved in those road traffic collisions that police deal with or attend, whether injuries have occurred or not, will undergo a preliminary breath test (or other appropriate preliminary test).**

This policy does not remove an officer's discretion. There will, of course, be rare occasions when a preliminary test cannot be administered but there is a presumption in favour of testing, requiring an officer to explain in the event why a test had not been appropriate within the relevant section of the collision reporting form MG NCRF/A.

See paragraph 7.1 (i) for full legal provisions

#### **4.0 Guidance, Procedures & Tactics**

##### **4.1**

All officers attending a collision will apply this policy.

Where a collision occurs owing to the presence of a motor vehicle on a road or other public place, and a constable reasonably believes that the person was driving, attempting to drive or in charge of the vehicle at the time of the collision that constable may require a person to co-operate with any one or more preliminary tests administered to the person by that constable or another constable.

There is no requirement for the constable to be in uniform. No other vehicle need be involved in the accident. The defendant's vehicle need not be physically involved in the accident; being a direct cause is sufficient.

There is no requirement to suspect consumption of alcohol etc. before requiring the provision of a test; however, a power of arrest for failure to co-operate with a preliminary test does require a reasonable suspicion. Without such suspicion the driver should be proceeded against by way of process

##### **4.2**

Supervisory officers will be responsible for ensuring this policy is complied with either by active supervision on scene or subsequent checking of Collision Booklet MG NCRF/A, where required to be completed, in which reasons for not requesting a breath test are to be detailed.

#### **5.0 Challenges & Representations**

Anyone directly affected by this policy may make representations in writing to:

Superintendent  
Head of Roads Policing  
Taplow Roads Policing Base  
124 Bath Road#  
Taplow  
Berkshire SL6 0NX

#### **6.0 Communication**

##### **6.1 Links to Police National Legal Database/Other**

Legislation relating to Drink/Driving and associated offences is contained within the **Road Traffic Act 1988** – see **Power to Administer Preliminary Tests.**

For related policies see:

[Non-injury Road Traffic Collisions Policy](#)

[Criminal Justice Site](#) – see ‘Road Traffic (General)’- Road Traffic Collision Reporting Procedures & TA6 Public Advice Leaflet on Road Traffic Collisions

(This link is not publicly available)

[STATS 20 - Instructions for Completion of Road Accident Reports for Injury Road Accidents](#)

## **6.2 Implementation Strategy**

This policy is an established policy, the communication of which needs to be by way of reminder to operational police officers through Force Weekly Orders; All Users Message; Managers Brief and LAN front page.

## **7.0 Compliance and Certification**

### **7.1 Human Rights Audit**

This policy has been drafted in accordance with the Human Rights Act 1998. It is acknowledged that this policy has the potential to engage the following articles of the Act. This policy will be applied with reference to the key principles of the Convention, namely justification, proportionality and least intrusion.

#### **(i) Legal basis**

**Refer to the Road Traffic Act 1988 for the full provisions relating to preliminary testing. (See PNLD Power to Administer Preliminary Tests - this link not available outside the police service)**

Section 6 of the Road Traffic Act 1988, as amended by the Railways and Transport Safety Act 2003, provides the power by which a constable may administer preliminary tests.

**6 (1) If any of subsections (2) to (5) applies a constable may require a person to co-operate with any one or more preliminary tests administered to the person by that constable or another constable.**

**6 (5) This subsection [is the relevant one for the purposes of this policy and] applies if-**

- (a) an accident occurs owing to the presence of a motor vehicle on a road or other public place, and
  - (b) a constable reasonably believes that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident.
- 6 (6) A person commits an offence if without reasonable excuse he fails to co-operate with a preliminary test in pursuance of a requirement imposed under this section.**
- 6 A (1) A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the proportion of alcohol in the person's breath or blood is likely to exceed the prescribed limit**
- 6 A (3) A preliminary breath test administered in reliance on section 6(5) may be administered-**
  - (a) At or near the place where the requirement to co-operate with the test is imposed, or
  - (b) If the constable who imposes the requirement thinks it expedient, at a police station specified by him.
- 6 B (1) A preliminary impairment test is a procedure whereby the constable administering the test-**
  - (a) Observes the person to whom the test is administered in his performance of tasks specified by the constable, and
  - (b) Makes such other observations of the person's physical state as the constable thinks expedient.
- 6 B (4) A preliminary impairment test may be administered-**
  - (a) At or near the place where the requirement to co-operate with the test is imposed, or
  - (b) If the constable who imposes the requirement thinks it expedient, at a police station specified by him.
- 6 B (5) A constable administering a preliminary impairment test shall have regard to the code of practice under this section.**
- 6 B (6) A constable may administer a preliminary impairment test only if he is approved for that purpose by the chief officer of the police force to which he belongs.**

- 6 C (1) A preliminary drug test is a procedure by which a specimen of sweat or saliva is-**
- (a) Obtained, and
  - (b) Used for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication **whether** the person to whom the test is administered has a drug in his body.
- 6 C (2) A preliminary drug test may be administered-**
- (a) At or near the place where the requirement to co-operate with the test is imposed, or
  - (b) If the constable who imposes the requirement thinks it expedient, at a police station specified by him.
- 6 D (1) A constable may arrest a person without warrant if as a result of a preliminary breath test the constable reasonably suspects that the proportion of alcohol in the person's breath or blood exceeds the prescribed limit.**
- 6 D (2) A constable may arrest a person without warrant if-**
- (a) The person fails to co-operate with a preliminary test in pursuance of a requirement imposed under section 6, and
  - (b) The constable reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug.
- 6 D (3) A person may not be arrested under this section while at a hospital as a patient.**
- 6 E (1) A constable may enter any place (using reasonable force if necessary) for the purpose of-**
- (a) Imposing a requirement by virtue of section 6(5) following an accident in a case where the constable reasonably suspects that the accident **involved injury** of any person, or
  - (b) Arresting a person under section 6D following an accident in a case where the constable reasonably suspects that the accident involved injury of any person.

**(ii) Human Rights Articles Engaged**

Article 2 Right to Life

Article 2 (Right to life) states that “..... *Everyone’s right to life shall be protected by law*” The Article imposes two duties on the state, the second of which is to take reasonable measures to protect life. The duty to take reasonable measures to protect life includes a duty to put in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such sanctions. It may also include a positive obligation on the authorities to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual. This policy acknowledges the dangers created to others by those who drink and drive and fully exploits the opportunities to administer breath tests to detect offenders and to send out a strong deterrent message to all drivers.

#### Article 5 Right to Liberty

Article 5 (Right to Liberty and Security) states that ‘...Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:.....the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence .....’ Legislation allows, inter alia, for a constable to require the provision of a specimen of breath for a breath test in a number of circumstances, including following a collision. A driver will be detained whilst the procedure is carried out and the outcome of that test may result in the arrest of the individual.

#### Article 6 Right to a Fair Trial

Article 6 (Right to a Fair Trial) states that ‘...*In determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...*

2) *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law....’* Legislation allows for those arrested for failing to supply a specimen where alcohol is suspected or supplying a specimen which gives reasonable cause to suspect that the proportion of alcohol in that person’s breath exceeds the prescribed limit, in defined circumstances, shall be required to provide further specimens for analysis. The ‘roadside’ specimens are screening samples and any prosecution for exceeding the prescribed levels will be based upon the further evidence produced by a Type Approved Evidential Breath Test Machine or laboratory analysis of specimens supplied.

#### **(iii) Prohibition of Discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, national or social origin, association with a national

minority, property, birth or other status'. Actions taken as a consequence of this Policy will be applied in an impartial and fair way, having due regard for natural justice and human rights.

## **7.2 Diversity Impact Assessment**

This policy has been assessed against the six strands of diversity and has been rated as Low Impact.

## **7.3 Diversity (Human Resources)**

The policy equally applies to all drivers or suspected drivers regardless of race etc. and as such there are no Race Equality Impact issues. Actions taken as a consequence of the Policy will be applied in an impartial and fair way, having due regard for natural justice and Human Rights. In the application of this policy, the Force will not discriminate against any persons regardless of their gender, sexual orientation, race or ethnic origin, religion, age or disability.

## **7.4 Management of Police Information (MoPI) Compliance**

Information deemed 'for a policing purpose', or any data about an individual that is circulated or received by e-mail; or published/downloaded via the intranet or internet or circulated in any other format must comply with MoPI guidelines.

## **7.5 Community Engagement Strategy and Standards**

This policy has the potential to engage the Force Community Engagement Standards.

Please use the following links for further information:  
[Community Engagement Strategy](#)  
[Standards](#)

## **7.6 Data Protection**

Personal data processed in compliance with this policy will be managed in accordance with the provisions of the Data Protection Act 1998

## **7.7 Freedom of Information Act**

This policy is suitable for public disclosure. It will be published on the Thames Valley Police Freedom of Information Internet site

## **7.8 Protective Markings**

This policy will be '**NOT PROTECTIVELY MARKED**'. Health & Safety at Work The Health and Safety at Work Act imposes a duty of care upon the Chief Constable to ensure, as far as is reasonably practicable, the health,

safety and welfare of all staff. Risks associated with this policy have been assessed in other generic risk assessments relating to road side procedures, arrests, etc.

## **8.0 Monitoring and Review**

Since 1<sup>st</sup> April 2004 the Home Office has monitored police performance through the Policing Performance Assessment Framework. Performance in road safety will be measured using a performance indicator reflecting the number of people killed or seriously injured per vehicle kilometre in the force area.

This policy also supports the Corporate Priority Number 3 – promoting safety and security.

This policy also supports the Force's Casualty Reduction Strategy.

Figures relating to the number of preliminary breath tests are submitted to the Home Office and campaign figures are supplied to ACPO for publication. Collision statistics are supplied to the Department for Transport.

## **8.1 Review Process**

This policy has been reviewed in light of changes in legislation since initial publication. It will be further reviewed in the light of future significant changes in the law, court cases, changes to ACPO Roads Policing policy or national procedures, etc.